IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 518 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BACHUBHAI BHAGWANJIBHAI PATEL

Versus

ILABEN ALIAS DAKSHABEN KAUSHIKBHAI PATEL

Appearance:

1. Appeal from Order No. 518 of 2001

MR RM CHHAYA for Appellant No.

MR RA SEJPAL for Respondent No. 1

NOTICE SERVED for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 15/02/2005

ORAL JUDGEMENT

1. The appellants have preferred this appeal from order being aggrieved by the order dated 06/07/2001 passed below exh.5 by the learned 8th Joint Civil Judge

(S.D.), Rajkot in Special Civil Suit No.46 of 2001, whereby the said application was allowed.

2. The respondents herein - original plaintiffs had filed a suit being Special Civil Suit No.46 of 2001 claiming themselves to be the heirs of the son of the defendants - appellants herein who expired on 01/08/1999. In the said suit they had also filed an application for interim injunction and had prayed for an injunction to the effect that the appellants - defendants be restrained from transferring or alienating the properties mentioned in the said injunction application.

3. The learned 8th Joint Civil Judge (S.D.), Rajkot by order dated 06/07/2001 passed in the aforesaid Special Civil Suit came to the conclusion that the respondents, original plaintiffs, have 40% share in the properties enumerated in the plaint as well as in the injunction application. Hence, this appeal from order.

4. Mr.R M Chhaya learned advocate for the appellants has submitted that the learned trial Judge has erred in observing that the respondents herein, original plaintiffs before the trial Court, have 40% share in the property in question. He has submitted that the property in question was purchased by defendant no.1 in the name of his wife and son, and therefore, it cannot be said that the said property belonged to the son alone.

5. I have heard learned counsel for the parties and have perused the relevant documents on record. The learned trial Judge has observed that a son born in a Hindu family will automatically have a share in the self-acquired property and consequently his legal heirs shall also have a share in the said property. The property in question was purchased by appellant no.1 in the name of the deceased son who at the relevant point of time was a minor, and therefore, he cannot be said to be the owner of the said property. The conclusion arrived at by the learned trial Judge are contrary to law and in view of the facts and circumstances of the case, I am of the opinion that ends of justice would be met if the trial Court is directed to expedite the hearing of the suit while continuing the injunction granted by the trial Court.

6. Accordingly, the trial Court is directed to expedite the hearing of the suit being Special Civil Suit No.46 of 2001 pending before the Court of the learned 8th Joint Civil Judge (S.D.), Rajkot and to dispose it of within a period of six months if it is already ripe for

hearing; otherwise, within a period of one year from the date of receipt of writ of this order. While deciding the suit the trial Court shall not be influenced by the observations made by this Court in this order and shall decide the issue in accordance with law. The appellants herein, original defendants, shall be at liberty to move appropriate application before the trial Court for disposing of the suit property in question and the trial Court shall pass appropriate orders in the matter after hearing both the sides.

7. With the above observations and directions, the Appeal from Order stands disposed of. The injunction granted by the trial Court will continue till the suit in question is finally disposed of. Direct service permitted.

[K. S. JHAVERI, J.]
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